

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE MAY 27, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 890

Introduced by Senator Leno

(Coauthors: Assembly Members Butler and Wieckowski)

February 18, 2011

An act to add Title 1.6C.5 (commencing with Section 1788.50) to Part 4 of Division 3 of the Civil Code, and to amend Sections 700.010, 706.103, 706.104, 706.108, and 706.122 of, and to add Section 581.5 to, the Code of Civil Procedure, relating to debt buyers.

LEGISLATIVE COUNSEL'S DIGEST

SB 890, as amended, Leno. Debt buyers.

(1) Existing state and federal law regulate the practice of debt collection. Existing state law prohibits a debt collector from engaging in specified conduct, including the use of threats or causing a telephone to ring repeatedly to annoy the person called. Existing law prohibits a debt collector from obtaining an affirmation from a debtor of a consumer debt that has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, the fact that the debtor is not legally obligated to make such affirmation.

This bill would enact the Fair Debt Buyers Practices Act, which would regulate the activities of a person or entity that has bought consumer debt and the circumstances in which the person may bring suit. The bill

would prohibit a debt buyer, as defined, from making any written statement in an attempt to collect a consumer debt unless the debt buyer possesses information that the debt buyer is the sole owner of the specific debt at issue, the debt balance, as specified, and the name *and address* of the creditor at the time the debt was charged off, among other things. The bill would require the debt buyer to make certain documents available to the debtor, without charge, upon receipt of a request, within 15 days. The bill would require that a specified notice be included with the debt buyer's first written communication with the debtor. The bill would require all settlement agreements between a debt buyer and a debtor to be documented in open court or otherwise in writing and would require a debt buyer who receives a payment on a debt to provide a receipt or statement containing certain information. The bill would prohibit a debt buyer from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired. The bill would prescribe penalties for *a each* violation of the act and would provide that its provisions may not be waived. The bill would require a debt buyer bringing an action on consumer debt to include certain information in his or her complaint. The bill would prohibit an entry of judgment in favor of a plaintiff debt buyer unless ~~properly authenticated business records~~ *authenticated through a sworn declaration and relating to the debt and ownership of it, among other things, are properly in evidence, submitted by the debt buyer to the court*, and would permit a court to dismiss a debt buyer's action to collect with prejudice if this information is not provided or if the debt buyer fails to appear or is not prepared on the date scheduled for trial.

(2) Existing law establishes a process for the enforcement of money judgments and requires a levying officer to provide certain documents and information to a judgment debtor and to a designated employer in connection with wage garnishment. Existing law permits a process server also to serve an earnings withholding order on an employer and requires that the process server also serve certain documents at this time. Existing law requires an employer who is served with an earnings withholding order to provide certain documents to an employee who is a judgment debtor.

This bill would require, in the circumstances described above, that a copy of the form that the judgment debtor may use to make a claim of exemption and a copy of the form used to provide a financial statement also be provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) ~~The collection of debt is an appropriate business practice,~~
3 ~~and most entities involved in the collection of debt act within the~~
4 ~~requirements of the law, and respect the rights of consumers~~
5 ~~purchased by debt buyers has become a significant focus of public~~
6 ~~concern due to the adequacy of documentation required to be~~
7 ~~maintained by the industry in support of its collection activities~~
8 ~~and litigation.~~

9 (b) ~~According to the Federal Trade Commission and the~~
10 ~~Department of Consumer Affairs, the debt collection industry is,~~
11 ~~however, the source of more consumer inquiries in California than~~
12 ~~any other industry. A significant source of consumer complaints~~
13 ~~concerns attempts to collect debt that is not owed, has been~~
14 ~~discharged, or is impermissible. State law does not currently~~
15 ~~prescribe the specific nature of documentation that a debt buyer~~
16 ~~must maintain and produce in a legal action on the debt.~~

17 (c) ~~Debt collection lawsuits brought by debt buyers have~~
18 ~~increased sharply in recent years, and this increase has resulted in~~
19 ~~a significant strain on the state's courts. Documentation used to~~
20 ~~support the collection of a debt must be sufficient to prove that the~~
21 ~~individual who is being asked to pay the debt is in fact the~~
22 ~~individual associated with the original contract or agreement, and~~
23 ~~that the amount of indebtedness is accurate.~~

24 (d) ~~Many collection lawsuits brought by some debt buyers are~~
25 ~~not supported by sufficient documentation to establish the~~
26 ~~provenance of the alleged debt. In a significant percentage of these~~
27 ~~lawsuits, defendants never appear, resulting in default judgments~~
28 ~~where potential defenses to collection efforts are not raised. It is~~
29 ~~important to create documentation and process standards for the~~
30 ~~collection of consumer debt that all interested parties can easily~~
31 ~~understand.~~

32 (e) ~~To facilitate the collection of debt and ensure the integrity~~
33 ~~of the debt collection process, reasonable documentation~~
34 ~~establishing the provenance of purchased debt must be secured~~
35 ~~before action is taken to collect it. The existence of that~~

~~documentation will protect consumers, provide needed guidance to courts, and establish clear standards for debt buyers and the collection industry. Setting specific documentation and process standards will protect consumers, provide needed clarity to courts, and establish clearer criteria for debt buyers and the collection industry.~~

SEC. 2. Title 1.6C.5 (commencing with Section 1788.50) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6C.5. FAIR DEBT BUYERS PRACTICES ACT

1788.50. (a) As used in this title, “debt buyer” means a person or entity that ~~purchases~~ *is regularly engaged in the business of purchasing* charged-off consumer loans ~~or, consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection litigation.~~

(b) “Debt buyer” includes any ~~direct or indirect~~ parent, subsidiary, or other affiliate ~~of that exercises direct control over the person or entity described in subdivision (a), and any person or entity with an ownership interest in the purchased debt (a).~~

(c) *The acquisition by a check services company of the right to collect on a paper or electronic check instrument, including an Automated Clearing House item, that has been returned unpaid to a merchant does not constitute a purchase of delinquent consumer debt under this title.*

~~(e)~~

(d) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

~~(d)~~

(e) The provisions of this title shall apply to debt buyers ~~on~~ *with respect to* all debt sold or resold on or after July 1, 2013.

1788.52. (a) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

(1) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.

(2) The debt balance at charge off, ~~including~~ *and* an explanation ~~of the amount, nature, and reason for~~ all post-charge-off fees and charges, ~~and the basis for their imposition imposed by the~~

1 *charge-off creditor or any subsequent purchasers of the debt. This*
2 *subparagraph shall not be deemed to require a specific itemization*
3 *of each charge.*

4 (3) The date of default or the date of the last payment.

5 (4) The name *and an address* of the *charge-off* creditor at the
6 time of charge off, and the charge-off creditor's account number
7 associated with the debt. *The charge-off creditor's name and*
8 *address shall be in sufficient form so as to reasonably identify it.*

9 (5) The name and last known address of the debtor as ~~it~~ they
10 appeared in the *charge-off* creditor's records ~~at the time of charge~~
11 ~~off prior to the sale of the debt. For debt sold or resold Where the~~
12 ~~debt was sold prior to July January 1, 2013, the debtor's name and~~
13 ~~last known address will satisfy the requirements of this paragraph.~~
14 *as they appeared in the debt owner's records on December 31,*
15 *2012, shall be sufficient.*

16 (6) The names *and addresses* of all persons or entities that
17 purchased the debt after charge off, including the plaintiff debt
18 buyer. *The names and addresses of these persons or entities shall*
19 *be in sufficient form so as to reasonably identify them.*

20 (b) A debt buyer shall not make any written statement to a debtor
21 in an attempt to collect a consumer debt unless the debt buyer has
22 access to, ~~and can produce in accordance with subdivision (c), the~~
23 ~~following documents: to a copy of a contract or other document~~
24 ~~evidencing the debtor's agreement to the debt. If the claim is based~~
25 ~~on debt for which no signed contract or agreement exists, the debt~~
26 ~~buyer shall have access to a copy of a document provided to the~~
27 ~~debtor while the account was active, demonstrating that the debt~~
28 ~~was incurred by the debtor. For a revolving credit account, the~~
29 ~~most recent monthly statement recording a purchase transaction,~~
30 ~~last payment, or balance transfer shall be deemed sufficient to~~
31 ~~satisfy this requirement.~~

32 ~~(1) Business records evidencing the information required by~~
33 ~~paragraphs (1) to (6), inclusive, of subdivision (a).~~

34 ~~(2) A copy of a contract or other document evidencing the~~
35 ~~debtor's agreement to the debt. If the claim is based on debt for~~
36 ~~which no signed contract or agreement exists, a copy of a document~~
37 ~~provided to the debtor while the account was active, demonstrating~~
38 ~~that the debt was incurred by the debtor. The most recent monthly~~
39 ~~statement on a credit account recording a purchase transaction,~~

1 ~~last payment, or balance transfer shall be deemed sufficient to~~
2 ~~satisfy this requirement.~~

3 (c) A debt buyer shall provide the *information or documents*
4 ~~identified in subdivision subdivisions (a) and (b) to the debtor~~
5 ~~without charge within 15 calendar days of receipt of a debtor's~~
6 ~~written request for information regarding, or proof of, regarding~~
7 ~~the debt or proof of the debt.~~ If the debt buyer cannot provide the
8 *information or documents within 15 calendar days, the debt buyer*
9 *shall cease all collection of the debt until the debt buyer provides*
10 *the debtor the documentation information or documents described*
11 *in subdivision subdivisions (a) and (b). Except as provided*
12 *otherwise in this title, the request by the debtor shall be consistent*
13 *with the validation requirements contained in Section 1692g of*
14 *Title 15 of the United States Code. A debt buyer shall provide all*
15 *debtors with whom it has contact with an active postal address and*
16 *an active email address to which such these requests can be sent.*
17 *A debt buyer may also provide an active e-mail address to which*
18 *these requests can be sent and from which information and*
19 *documents can be delivered, if the parties agree.*

20 (d) (1) ~~A debt buyer's buyer shall include with its first written~~
21 ~~communication with the debtor shall include the following notice,~~
22 ~~in no smaller than 12-point type, on the first page, with the words~~
23 ~~"VERY IMPORTANT" in bolded print type, a separate prominent~~
24 ~~notice that provides:~~

25
26 NOTICE TO CONSUMER
27

28 ~~DEPENDING ON HOW MUCH TIME HAS PASSED SINCE~~
29 ~~YOUR DEBT BECAME PAST DUE, YOU MAY HAVE THE~~
30 ~~ABILITY TO STOP A DEBT COLLECTION LAWSUIT OR~~
31 ~~OTHER LEGAL ACTION AGAINST YOU. THIS RIGHT IS~~
32 ~~CALLED A "STATUTE OF LIMITATIONS" DEFENSE.~~
33 ~~HOWEVER, FAILURE TO PAY YOUR DEBTS MAY~~
34 ~~NEGATIVELY IMPACT YOUR CREDIT RATING FOR A~~
35 ~~PERIOD OF UP TO SEVEN YEARS FROM THE DATE WHEN~~
36 ~~THE DEBT WAS CHARGED OFF OR PLACED FOR~~
37 ~~COLLECTION.~~

38 ~~IT IS VERY IMPORTANT THAT YOU RESPOND TO THESE~~
39 ~~DOCUMENTS. TO GET HELP, YOU CAN CONSULT AN~~
40 ~~ATTORNEY, VISIT A LOCAL SELF-HELP CENTER, OR VISIT~~

1 ~~HTTP://WWW.COURTS.CA.GOV/SELFHELP.HTM~~ — FOR
2 ~~MORE INFORMATION.~~

3 “You may request records showing the following: (1) that [insert
4 name of debt buyer] has the right to seek collection of the debt;
5 (2) the debt balance, including any additional fees and charges;
6 (3) the date of default or the date of the last payment; (4) the name
7 of the creditor and the account number associated with the debt;
8 (5) the name and last known address of the debtor as it appeared
9 in the creditor’s or debt buyer’s records prior to the sale of the
10 debt, as appropriate; (6) the names of all persons or entities that
11 have purchased the debt. You may also request from us a copy of
12 the contract or other document evidencing your agreement to the
13 debt.

14 “A request for these records may be addressed to: [insert debt
15 buyer’s active mailing address].”
16

17 (2) When collecting on a time-barred debt where the debt is not
18 past the date for obsolescence provided for in Section 605(a) of
19 the Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
20

21 “The law limits how long you can be sued on a debt. Because
22 of the age of your debt, we will not sue you for it. If you do not pay
23 the debt, [insert name of debt buyer] may [continue to] report it
24 to the credit reporting agencies as unpaid.”
25

26 (3) When collecting on a time-barred debt where the debt is
27 past the date for obsolescence provided for in Section 605(a) of
28 the Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
29

30 “The law limits how long you can be sued on a debt. Because
31 of the age of your debt, we will not sue you for it, and we will not
32 report it to any credit reporting agency.”
33

34 ~~(e) In the event of a conflict between the requirements of~~
35 ~~subdivision (c) and federal law, so that it is impracticable to comply~~
36 ~~with both, the requirements of federal law shall prevail. If a~~
37 ~~language other than English is principally used by the debt buyer~~
38 ~~in the initial oral contract with the debtor, a notice shall be~~
39 ~~provided to the debtor in that language within five working days.~~

1 (f) *In the event of a conflict between the requirements of*
2 *subdivision (d) and federal law, so that it is impracticable to*
3 *comply with both, the requirements of federal law shall prevail.*

4 1788.54. (a) All settlement agreements between a debt buyer
5 and a debtor shall be documented in open court or otherwise
6 reduced to writing. ~~A The debt buyer shall ensure that a copy of~~
7 ~~the written agreement is provided to the debtor.~~

8 (b) A debt buyer that receives payment on a debt shall provide,
9 within 30 calendar days, a receipt or monthly statement, to the
10 ~~individual from whom payment is received~~ debtor. The receipt or
11 statement shall clearly and conspicuously show the amount and
12 date paid, the name of the entity paid, the current account number,
13 the name of the charge-off creditor, the account number issued by
14 the charge-off creditor, and the remaining balance owing, if any.
15 The receipt or statement may be provided electronically, ~~at the~~
16 ~~debtor's option if the parties agree.~~

17 ~~(b)~~

18 (c) A debt buyer that accepts a payment as payment in full, or
19 as a full and final compromise of the debt, shall provide, within
20 30 calendar days, a final statement that complies with subdivision
21 ~~(a)~~ (b). A debt buyer shall not sell an interest in a resolved debt,
22 or any ~~confidential~~ personal or financial information related to the
23 resolved debt.

24 1788.56. A debt buyer shall not bring suit or initiate an
25 arbitration or other legal proceeding to collect a consumer debt if
26 the applicable statute of limitations on the debt buyer's claim has
27 expired.

28 1788.58. In an action brought by a debt buyer on a consumer
29 debt:

30 (a) The complaint shall allege all of the following:

31 (1) That the plaintiff is a debt buyer.

32 (2) The nature of the underlying debt and the consumer
33 transaction or transactions from which it is derived, in a short and
34 plain statement.

35 (3) That the debt buyer is the sole owner of the debt at issue, or
36 has authority to assert the rights of all owners of the debt.

37 (4) The debt balance at charge off, ~~including~~ and an explanation
38 ~~of the amount, nature, and reason for~~ all post-charge-off fees and
39 charges, ~~and the basis for their imposition imposed by the~~
40 ~~charge-off creditor or any subsequent purchaser of the debt. This~~

1 *paragraph shall not be deemed to require a specific itemization*
2 *of each charge.*

3 (5) The date of default or the date of the last payment.

4 (6) The name *and an address* of the *charge-off* creditor at the
5 time of charge off, and the charge-off creditor's account number
6 associated with the debt. *The charge-off creditor's name and*
7 *address shall be in sufficient form so as to reasonably identify it.*

8 (7) The name and *last known* address of the debtor as they
9 appeared in the creditor's records ~~at the time of charge off prior~~
10 ~~to the sale of the debt. For If the debt was sold or resold prior to~~
11 ~~July January 1, 2013, the debtor's name and last known address~~
12 ~~will satisfy the requirements of this paragraph. as they appeared~~
13 ~~in the debt owner's records on December 31, 2012, shall be~~
14 ~~sufficient.~~

15 (8) The names *and addresses* of all persons or entities that
16 purchased the debt after charge off, including the plaintiff debt
17 buyer. *The names and addresses of these persons or entities shall*
18 *be in sufficient form so as to reasonably identify them.*

19 (9) That the debt buyer has complied with Section 1788.52.

20 (b) The document described in ~~paragraph (2)~~ of subdivision (b)
21 of Section 1788.52, shall be attached to the complaint.

22 ~~(e) The following separate written notice shall be served with~~
23 ~~the complaint in at least 12-point type, with the words "VERY~~
24 ~~IMPORTANT" in bolded print:~~

25
26 NOTICE TO CONSUMER
27

28 ~~DEPENDING ON HOW MUCH TIME HAS PASSED SINCE~~
29 ~~YOUR DEBT BECAME PAST DUE, YOU MAY HAVE THE~~
30 ~~ABILITY TO STOP A DEBT COLLECTION LAWSUIT OR~~
31 ~~OTHER LEGAL ACTION AGAINST YOU. THIS RIGHT IS~~
32 ~~CALLED A "STATUTE OF LIMITATIONS" DEFENSE.~~
33 ~~HOWEVER, FAILURE TO PAY YOUR DEBTS MAY~~
34 ~~NEGATIVELY IMPACT YOUR CREDIT RATING FOR A~~
35 ~~PERIOD OF UP TO SEVEN YEARS FROM THE DATE OF~~
36 ~~WHEN THE DEBT WAS CHARGED OFF OR PLACED FOR~~
37 ~~COLLECTION.~~

38 ~~IT IS VERY IMPORTANT THAT YOU RESPOND TO THESE~~
39 ~~DOCUMENTS. TO GET HELP, YOU CAN CONSULT AN~~
40 ~~ATTORNEY, VISIT A LOCAL SELF-HELP CENTER, OR VISIT~~

1 ~~HTTP://WWW.COURTS.CA.GOV/SELFHELP.HTM~~ FOR
2 ~~MORE INFORMATION.~~

3
4 ~~(d) In the event of a conflict between the requirements of~~
5 ~~subdivision (c) and federal law, so that it is impracticable to comply~~
6 ~~with both, the requirements of federal law shall prevail.~~

7 ~~(e)~~
8 (c) The requirements of this title shall not be deemed to require
9 the disclosure in public records of personal, financial, or medical
10 information, the privacy of which is protected by any state or
11 federal law.

12 1788.60. (a) In an action initiated by a debt buyer, no default
13 or other judgment may be entered against a debtor unless
14 ~~authenticated business records have been admitted into evidence,~~
15 *authenticated through a sworn declaration, are submitted by the*
16 *debt buyer to the court* to establish the facts required to be alleged
17 by paragraphs (3) to (9) (8), inclusive, of subdivision (a) of Section
18 1788.58.

19 (b) No default or other judgment may be entered against a debtor
20 unless *a copy of the document described in paragraph (2) of*
21 ~~subdivision (a) (b) of Section 1788.52 is admitted into evidence,~~
22 *authenticated through a sworn declaration, has been submitted*
23 *by the debt buyer to the court.*

24 (c) In any action on a consumer debt, if a debt buyer plaintiff
25 seeks a default judgment and has not complied with the
26 requirements of this title, the court shall not enter a default
27 judgment for the plaintiff and may, in its discretion, dismiss the
28 action.

29 1788.62. (a) A debt buyer that violates any provision of this
30 title with respect to any person shall be liable to that person in an
31 amount equal to the sum of the following:

32 (1) Any actual damages sustained by that person as a result of
33 the violation, including, but not limited to, the amount of any
34 judgment obtained by the debt buyer as a result of a time-barred
35 suit to collect a debt from that person.

36 (2) ~~Additional~~ Statutory damages in an amount as the court may
37 allow, which shall not be less than one hundred dollars (\$100) nor
38 greater than one thousand dollars (\$1,000) *per violation.*

39 (b) In the case of a class action, a debt buyer that violates any
40 provision of this title shall be liable for any ~~additional~~ statutory

1 damages for each named plaintiff as provided for in paragraph (2)
2 of subdivision (a). If the court finds that the debt buyer engaged
3 in a pattern and practice of violating any provision of this title, the
4 court may award additional damages to the class in an amount not
5 to exceed the lesser of five hundred thousand dollars (\$500,000)
6 or 1 percent of the net worth of the debt buyer.

7 (c) (1) In the case of any successful action to enforce liability
8 under this section, the court shall award costs of the action, together
9 with reasonable attorney's fees as determined by the court.

10 (2) Reasonable attorney's fees may be awarded to a prevailing
11 debt buyer upon a finding by the court that the plaintiff's
12 prosecution of the action was not in good faith.

13 (d) In determining the amount of liability under subdivision (b),
14 the court shall consider, among other relevant factors, the frequency
15 and persistence of noncompliance by the debt buyer, the nature of
16 the noncompliance, the resources of the debt buyer, and the number
17 of persons adversely affected.

18 (e) A debt buyer shall have no civil liability under this section
19 if the debt buyer shows by a preponderance of evidence that the
20 violation was not intentional and resulted from a bona fide error,
21 *and occurred* notwithstanding the maintenance of procedures
22 reasonably adopted to avoid any error.

23 (f) An action to enforce any liability created by this title shall
24 be brought within one year from the last violation.

25 (g) Recovery in an action brought under the Rosenthal Fair Debt
26 Collection Practices Act (Title 1.6C (commencing with Section
27 1788) or the federal Fair Debt Collection Practices Act (15 U.S.C.
28 Sec. 1692 et seq.) shall preclude recovery for the same acts in an
29 action brought under this title.

30 1788.64. Any waiver of the provisions of this title is contrary
31 to public policy, and is void and unenforceable.

32 SEC. 3. Section 581.5 is added to the Code of Civil Procedure,
33 to read:

34 581.5. In a case involving consumer debt, as defined in Section
35 1788.2 of the Civil Code, and as regulated under Title 1.6C.5
36 (commencing with Section 1788.50) of Part 4 of Division 3 of the
37 Civil Code, if the defendant debtor appears for trial on the
38 scheduled trial date, and the plaintiff debt buyer either fails to
39 appear or is not prepared to proceed to trial, and the court does not
40 find a good cause for continuance, the court may, in its discretion,

1 dismiss the action with or without prejudice. Notwithstanding any
2 other law, in this instance, the court may award the defendant
3 debtor's costs of preparing for trial, including, but not limited to,
4 lost wages and transportation expenses.

5 SEC. 4. Section 700.010 of the Code of Civil Procedure is
6 amended to read:

7 700.010. (a) At the time of levy pursuant to this article or
8 promptly thereafter, the levying officer shall serve a copy of the
9 following on the judgment debtor:

10 (1) The writ of execution.

11 (2) A notice of levy.

12 (3) If the judgment debtor is a natural person, a copy of the form
13 listing exemptions prepared by the Judicial Council pursuant to
14 subdivision (c) of Section 681.030, the list of exemption amounts
15 published pursuant to subdivision (e) of Section 703.150, a copy
16 of the form that the judgment debtor may use to make a claim of
17 exemption pursuant to Section 703.520, and a copy of the form
18 the judgment debtor may use to provide a financial statement
19 pursuant to Section 703.530.

20 (4) Any affidavit of identity, as defined in Section 680.135, for
21 names of the debtor listed on the writ of execution.

22 (b) Service under this section shall be made personally or by
23 mail.

24 SEC. 5. Section 706.103 of the Code of Civil Procedure is
25 amended to read:

26 706.103. (a) The levying officer shall serve upon the
27 designated employer all of the following:

28 (1) The original and one copy of the earnings withholding order.

29 (2) The form for the employer's return.

30 (3) The notice to employee of earnings withholding order.

31 (4) A copy of the form that the judgment debtor may use to
32 make a claim of exemption.

33 (5) A copy of the form the judgment debtor may use to provide
34 a financial statement.

35 (b) At the time the levying officer makes service pursuant to
36 subdivision (a), the levying officer shall provide the employer with
37 a copy of the employer's instructions referred to in Section
38 706.127. The Judicial Council may adopt rules prescribing the
39 circumstances when compliance with this subdivision is not
40 required.

1 (c) No earnings withholding order shall be served upon the
2 employer after the time specified in subdivision (b) of Section
3 699.530.

4 SEC. 6. Section 706.104 of the Code of Civil Procedure is
5 amended to read:

6 706.104. Any employer who is served with an earnings
7 withholding order shall:

8 (a) Deliver to the judgment debtor a copy of the earnings
9 withholding order, the notice to employee of earnings withholding,
10 a copy of the form that the judgment debtor may use to make a
11 claim of exemption, and a copy of the form the judgment debtor
12 may use to provide a financial statement within 10 days from the
13 date of service. If the judgment debtor is no longer employed by
14 the employer and the employer does not owe the employee any
15 earnings, the employer is not required to make such delivery. The
16 employer is not subject to any civil liability for failure to comply
17 with this subdivision. Nothing in this subdivision limits the power
18 of a court to hold the employer in contempt of court for failure to
19 comply with this subdivision.

20 (b) Complete the employer's return on the form provided by
21 the levying officer and mail it by first-class mail, postage prepaid,
22 to the levying officer within 15 days from the date of service. If
23 the earnings withholding order is ineffective, the employer shall
24 state in the employer's return that the order will not be complied
25 with for this reason and shall return the order to the levying officer
26 with the employer's return.

27 SEC. 7. Section 706.108 of the Code of Civil Procedure is
28 amended to read:

29 706.108. (a) If a writ of execution has been issued to the county
30 where the judgment debtor's employer is to be served and the time
31 specified in subdivision (b) of Section 699.530 for levy on property
32 under the writ has not expired, a judgment creditor may deliver
33 an application for issuance of an earnings withholding order to a
34 registered process server who may then issue an earnings
35 withholding order.

36 (b) If the registered process server has issued the earnings
37 withholding order, the registered process server, before serving
38 the earnings withholding order, shall deposit with the levying
39 officer a copy of the writ of execution, the application for issuance
40 of an earnings withholding order, and a copy of the earnings

1 withholding order, and shall pay the fee provided by Section 26750
2 of the Government Code.

3 (c) A registered process server may serve an earnings
4 withholding order on an employer whether the earnings
5 withholding order was issued by a levying officer or by a registered
6 process server, but no earnings withholding order may be served
7 after the time specified in subdivision (b) of Section 699.530. In
8 performing this function, the registered process server shall serve
9 upon the designated employer all of the following:

10 (1) The original and one copy of the earnings withholding order.

11 (2) The form for the employer's return.

12 (3) The notice to the employee of the earnings withholding
13 order.

14 (4) A copy of the form that the judgment debtor may use to
15 make a claim of exemption.

16 (5) A copy of the form the judgment debtor may use to provide
17 a financial statement.

18 (6) A copy of the employer's instructions referred to in Section
19 706.127, except as otherwise prescribed in rules adopted by the
20 Judicial Council.

21 (d) Within five court days after service under this section, all
22 of the following shall be filed with the levying officer:

23 (1) The writ of execution, if it is not already in the hands of the
24 levying officer.

25 (2) Proof of service on the employer of the papers listed in
26 subdivision (c).

27 (3) Instructions in writing, as required by the provisions of
28 Section 687.010.

29 (e) If the fee provided by Section 26750 of the Government
30 Code has been paid, the levying officer shall perform all other
31 duties required by this chapter as if the levying officer had served
32 the earnings withholding order. If the registered process server
33 does not comply with subdivisions (b), where applicable, and (d),
34 the service of the earnings withholding order is ineffective and the
35 levying officer is not required to perform any duties under the
36 order and may terminate the order and may release any withheld
37 earnings to the judgment debtor.

38 (f) The fee for services of a registered process server under this
39 section shall be allowed as a recoverable cost pursuant to Section
40 1033.5.

1 SEC. 8. Section 706.122 of the Code of Civil Procedure is
2 amended to read:

3 706.122. The “notice to employee of earnings withholding
4 order” shall contain a statement that informs the employee in
5 simple terms of the nature of a wage garnishment, the right to an
6 exemption, the procedure for claiming an exemption, and any other
7 information the Judicial Council determines would be useful to
8 the employee and appropriate for inclusion in the notice, including
9 all of the following:

10 (a) The named employer has been ordered to withhold from the
11 earnings of the judgment debtor the amounts required to be
12 withheld under Section 706.050, or such other amounts as are
13 specified in the earnings withholding order, and to pay these
14 amounts over to the levying officer for transmittal to the person
15 specified in the order in payment of the judgment described in the
16 order.

17 (b) The manner of computing the amounts required to be
18 withheld pursuant to Section 706.050.

19 (c) The judgment debtor may be able to keep more or all of the
20 judgment debtor’s earnings if the judgment debtor proves that the
21 additional earnings are necessary for the support of the judgment
22 debtor or the judgment debtor’s family supported in whole or in
23 part by the judgment debtor.

24 (d) If the judgment debtor wishes a court hearing to prove that
25 amounts should not be withheld from the judgment debtor’s
26 earnings because they are necessary for the support of the judgment
27 debtor or the judgment debtor’s family supported in whole or in
28 part by the judgment debtor, the judgment debtor shall file with
29 the levying officer an original and one copy of the “judgment
30 debtor’s claim of exemption” and an original and one copy of the
31 “judgment debtor’s financial statement.”

32 SEC. 9. The provisions of this act are severable. If any
33 provision of this section or its application is held invalid, that
34 invalidity shall not affect other provisions or applications that can
35 be given effect without the invalid provision or application.